

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BARBARA DIKE,
Plaintiff

VS.

**HERSCHBACH PETROLEUM
COMPANY, LTD. and
FREDERICK J. HERSCHBACH**
Defendants

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CIVIL ACTION NO. _____
JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

INTRODUCTION

1. Pursuant to 29 USC § 207 ("FLSA"), Barbara Dike, Plaintiff alleges violations of her statutory employment right to receive overtime pay from Defendants, Herschbach Petroleum Company, Ltd. and Fredrick J. Herschbach (Hereinafter "Defendants") as a result of Defendants' failure to pay Plaintiff overtime wages. Plaintiff seeks her unpaid overtime, liquidated damages, all available equitable relief, attorney fees, and litigation expenses/costs, including expert witness fees and expenses.

2. Plaintiff also seeks recovery for Defendants' misclassification of her as a contract laborer. Defendants paid Plaintiff a flat amount per work week without any deductions for FICA and Medicare taxes. Therefore, Plaintiff seeks recovery of damages for Defendants violations of applicable IRS deduction regulations.

PARTIES

3. Plaintiff, Barbara Dike, is a resident of Tyler, Smith County, Texas. Defendant, Herschbach Petroleum Company, Ltd., is a Texas limited partnership doing business in the state

of Texas with its principal place of business at 121 S. Broadway, #753, Tyler, Texas 75702. Defendant, Fredrick J. Herschbach is the managing partner of Herschbach Petroleum Company, Ltd. and was personally responsible for the operations of Herschbach Petroleum Company, Ltd. Defendant, Herschbach Petroleum Company, Ltd. may be served by delivering a copy of this petition to its registered agent for service, Fredrick J. Herschbach, 121 S. Broadway, #753, Tyler, Texas 75702. Fredrick J. Herschbach may be served at 121 S. Broadway, #753, Tyler, Texas 75702.

JURISDICTION AND VENUE

4. This court has jurisdiction by virtue of 28 USC §§ 1331, and 1391. The Defendant's Tyler, Texas location is located within the Eastern District of Texas and the Court has subject matter jurisdiction and personal jurisdiction to hear the case. *See* 29 U.S.C. 201, et seq.

FACTS

5. Plaintiff was employed at Herschbach Petroleum Company, Ltd. as a receptionist and bookkeeper; however, the work she did for Herschbach Petroleum Company, Ltd. was not exempt as defined under the FLSA. The evidence at trial will show that Plaintiff was not paid overtime wages at one and one-half times her regular hourly rate for all hours worked in excess of 40 hours in a work week.

6. Plaintiff believes and, therefore, alleges that the failure of Herschbach Petroleum Company, Ltd.'s to pay Plaintiff was intentional.

7. Defendants also failed to make the required FICA and Medicare tax deductions from Plaintiff's pay in violation of the applicable IRS regulations.

CLAIMS

8. The Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) is commonly referred to as

“FLSA.” Among other things, the FLSA statutes and the regulations promulgated there under govern the activities of the pay practices of employers involved in commerce. Plaintiff alleges that the failure to pay Plaintiff for all hours worked is a direct violation of the FLSA statutes and regulations. Additionally, Plaintiff alleges that the failure to pay Plaintiff one and one-half her regular rate for all hours worked in excess of 40 hours in a work week is a direct violation of the FLSA statutes and regulations. Plaintiff is entitled to receive the unpaid wages due her, liquidated damages, costs, and attorneys’ fees.

9. Additionally, Defendants’ failure to make the required FICA and Medicare deductions has caused Plaintiff damages in that her Social Security benefits have been impaired in an amount to be determined.

10. Plaintiff also brings this action against Fredrick J. Herschbach as an individual since he exercised significant control over the company's operations.

JURY DEMAND

11. Plaintiff, individually and as a representative of the class, request a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Plaintiff recover from Defendants the following:

1. The unpaid wages due to Plaintiff;
2. Liquidated damages authorized by the applicable statutes;
3. Damages for Defendants failure to make the required FICA and Medicare deductions;
4. Court costs;
5. Attorneys’ fees; and
6. Such other and further relief as the Court deems just.

Respectfully submitted,

/s/

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